

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,) C.A. No. 10-50585
Plaintiff-Appellee,) D.C. No. CR 05-211-DDP
) (Cent. Dist. Cal.)
v.)
) GOVERNMENT'S UNOPPOSED
DILLON SHAREEF,)
also known as NURALDIN SHAREEF)
KARIM,)
also known as DILLON SHARIF,)
)
Defendant-Appellant.)
)

Plaintiff-Appellee United States of America hereby requests that this Court take judicial notice of the attached Bureau of Prisons credit computation for defendant-appellant Dillon Shareef, also known as Nuraldin Shareef Karim, also known as Dillon Sherif ("defendant").

This request is made pursuant to Federal Rules of Evidence 201(d) & (f) and 1101(a), Federal Rules of Appellate Procedure 2, 27, and 47(b), and Ninth Circuit Rule 27-1 and is based on the attached Memorandum of Points and Authorities, the attached

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Declaration of Ellyn Marcus Lindsay, and the files and records in this case.

Defendant does not oppose this request.

DATED: August 26, 2011

Respectfully submitted,

ANDRÉ BIROTTÉ JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

s/ Ellyn Marcus Lindsay
ELLYN MARCUS LINDSAY
Assistant United States Attorney
Major Frauds Section

MEMORANDUM OF POINTS AND AUTHORITIES

THIS COURT SHOULD TAKE JUDICIAL NOTICE OF THE BUREAU OF PRISONS CREDIT COMPUTATION FOR DEFENDANT

The government requests that this Court take judicial notice of the attached Bureau of Prisons credit computation for defendant.

1. Judicial Notice Is Appropriate on Appeal

This Court may take judicial notice of matters not included in the record if they "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Federal Rule of Evidence 201(b); White v. Martel, 601 F.3d 882, 885 (9th Cir. 2010) (taking judicial notice of state court records, state bar records, and a docket sheet); United States v. Thornton, 511 F3d 1221, 1229 n.5 (9th Cir. 2008) (taking judicial notice of a Bureau of Prisons policy statement). The Federal Rules of Evidence apply to this Court, see Fed. R. Evid. 1101(a), and they allow for judicial notice "at any stage of the proceeding." Fed. R. Evid. 201(f). In fact, courts are required to take judicial notice "if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(d). To this end, the taking of such notice at the appellate level is a recognized "exception[] to that general rule" that the record on appeal normally consists of those materials that were before the district court. Reebok Int'l, Ltd. v. Marnatech Enterprises, Inc., 970 F.2d 552, 556 n.5

(9th Cir. 1992); see also Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347, 361 n.22 (8th Cir. 1984) (even though document was "not part of the record on appeal, the Court is fully empowered to take judicial notice of it").

2. Judicial Notice Is Warranted Here

At issue in this appeal is whether the district court erred in deferring to the Bureau of Prisons the computation of credits for time defendant served prior to sentencing. As explained further in the government's brief, the law is clear that the computation is to be done by the Bureau of Prisons and not the district court. But, in any event, the attached Bureau of Prisons Records make clear that the Bureau of Prisons has given defendant the credits he requests; thus defendant's argument is moot.

Because the Bureau of Prisons records "'have a direct relation to matters at issue,'" judicial notice is appropriate here. Robinson Rancheria Citizens Council, 971 F.2d 244, 248 (9th Cir. 1992). The government's request should be granted.

DECLARATION OF ELLYN MARCUS LINDSAY

I, Ellyn Marcus Lindsay, hereby declare and state as follows:

1. I am an Assistant United States Attorney in the Central District of California assigned to the Major Frauds Section and prepared the government's answering brief in United States v. Dillon Shareef, also known as Nuraldin Shareef Karim, also known as Dillon Sherif, C.A. No. 10-50585.

2. I obtained the attached Bureau of Prisons computation of credits for defendant from Eliezer Ben-Shmuel, Supervisory Attorney for the Bureau of Prisons. This document shows the time credits that have been awarded to defendant by the Bureau of Prisons.

3. I provided this document to counsel for defendant on August 3, 2011. On August 17, 2011, he informed me that he does not oppose my motion for this Court to take judicial notice of this document.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of August 2011, in Los Angeles, California.

s/ Ellyn Marcus Lindsay
ELLYN MARCUS LINDSAY
Assistant United States Attorney

LOSE9 * PUBLIC INFORMATION * 08-02-2011
PAGE 001 * INMATE DATA * 11:23:30
AS OF 08-02-2011

REGNO...: 57185-112 NAME: SHAREEF, DILLON

RESP OF: LOF FAX: 805-736-1292
PHONE...: 805-736-4154 RACE/SEX...: ASIAN/PAC.ISL. / MALE
PROJ REL MT: GOOD CONDUCT TIME RELEASE AGE: 50
PROJ REL DT: 05-01-2021 PAR ELIG DT: N/A
PAR HEAR DT:

G0002 MORE PAGES TO FOLLOW . . .

LOSE9 * PUBLIC INFORMATION * 08-02-2011
PAGE 002 * INMATE DATA * 11:23:30
AS OF 08-02-2011

REGNO...: 57185-112 NAME: SHAREEF, DILLON

RESP OF: LOF
PHONE...: 805-736-4154 FAX: 805-736-1292
HOME DETENTION ELIGIBILITY DATE: 11-01-2020

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 05-01-2021 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: CALIFORNIA, CENTRAL DISTRICT
DOCKET NUMBER.....: CR 05-00211 DDP
JUDGE.....: PREGERSON
DATE SENTENCED/PROBATION IMPOSED: 11-22-2010
DATE COMMITTED.....: 01-26-2011
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$300.00	\$00.00	\$00.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$924,613.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 150
OFF/CHG: 18:1341,2326 MAIL FRAUD, ENHANCED PENALTIES FOR TELEMARKETING
FRAUD AGAINST THE ELDERLY; AIDING AND ABETTING AND CAUSING AN
ACT TO BE DONE

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 171 MONTHS
TERM OF SUPERVISION.....: 3 YEARS
DATE OF OFFENSE.....: 11-30-2000

G0002 MORE PAGES TO FOLLOW . . .

LOSE9 *
PAGE 003 OF 003 *

PUBLIC INFORMATION
INMATE DATA
AS OF 08-02-2011

* 08-02-2011
* 11:23:30

REGNO.: 57185-112 NAME: SHAREEF, DILLON

RESP OF: LOF
PHONE.: 805-736-4154 FAX: 805-736-1292
-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 12-20-2010 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 01-05-2011 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 11-22-2010
TOTAL TERM IN EFFECT.....: 171 MONTHS
TOTAL TERM IN EFFECT CONVERTED..: 14 YEARS 3 MONTHS
EARLIEST DATE OF OFFENSE.....: 11-30-2000

JAIL CREDIT.....: FROM DATE THRU DATE
10-22-2001 10-23-2001
12-02-2008 11-21-2010

TOTAL PRIOR CREDIT TIME.....: 722
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED..: 670
TOTAL GCT EARNED.....: 108
STATUTORY RELEASE DATE PROJECTED: 05-01-2021
EXPIRATION FULL TERM DATE.....: 03-02-2023

PROJECTED SATISFACTION DATE.....: 05-01-2021
PROJECTED SATISFACTION METHOD...: GCT REL

S0055 NO PRIOR SENTENCE DATA EXISTS FOR THIS INMATE

9th Circuit Case Number(s) 10-50585

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Aug 26, 2011.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

s/ Tom Tanaka

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)